

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0041, In re Juveniles 2006-0041-A, -B, -C, the court on January 26, 2007, issued the following order:**

The appellant, the mother of Juveniles 2006-0041-A, -B, and -C, appeals an order of the probate court terminating her parental rights. She contends that: (1) the decision of the probate court is plain error because DCYF presented no evidence at trial that it had assisted her for the statutorily-required twelve-month period; (2) DCYF failed to meet its burden of proof by failing to prove every element of the petition for termination of parental rights; (3) she had substantially complied with the conditions ordered by the district court; (4) the decision to terminate her rights was not in the best interests of the children; and (5) DCYF did not make reasonable efforts to assist her with her depression. We affirm.

Before a court may order the termination of a parent's rights, the petitioning party must prove a statutory ground for termination beyond a reasonable doubt; one such ground is the failure to correct conditions leading to a finding of neglect under RSA chapter 169-C. In re Juvenile 2003-195, 150 N.H. 644, 648 (2004); RSA 170-C:5, III (2002). We will not disturb the probate court's decree in a termination of parental rights case unless it is unsupported by the evidence or plainly erroneous as a matter of law. In re Antonio W., 147 N.H. 408, 412 (2002). The probate court is in the best position to assess and weigh the evidence because it has the benefit of observing the parties and their witnesses; we therefore do not consider whether we would have found differently but rather whether a reasonable person could have found as the probate court did. See In re Craig T., 144 N.H. 584, 585 (1999).

At oral argument, the appellant conceded that she did not raise her first claim of error in the trial court. She asked that we review the issue under our plain error rule. See Sup. Ct. R. 16-A; State v. Henderson, 154 N.H. \_\_\_, \_\_\_, 907 A.2d 968, 970 (2006) (setting forth elements of plain error rule). Having reviewed the record before us, we decline to do so in this case. See State v. Taylor, 152 N.H. 719, 720 (2005) (plain error rule should be used sparingly, its use limited to those circumstances in which miscarriage of justice would otherwise result).

We also find unpersuasive the appellant's arguments that DCYF failed to meet its burden of proof and that she had substantially complied with the conditions ordered by the district court. The probate court found that while there were periods during which the appellant was in at least partial compliance with the district court's orders, "she never effected a meaningful remediation of the underlying conditions of her neglect --- failure to maintain a safe and healthy home environment and provide appropriate supervision and care." The record is replete with evidence that supports this finding. See In re Craig T., 144 N.H. at 585.

The trial court's finding that termination of the appellant's parental rights was in the best interests of the children is also supported by the record. The appellant's failure to maintain even the most rudimentary sanitary conditions in her home, to follow medical advice and to supervise her children presented significant threats to their well-being. At the time of the termination hearing, the children had not lived with the appellant for over a year. The oldest had improved in both academic performance and behavior. The younger two had spent almost half their life in a placement with a foster parent who wished to adopt them. Given the extensive evidence in the record, we find no error in the trial court's finding.

Finally, we find no merit in the appellant's argument that the State failed to make reasonable efforts to treat her depression, particularly given her continued failure to avail herself of the numerous programs made available to her. See In re Jonathan T., 148 N.H. 296, 301 (2002) (recognizing reasonable efforts analysis includes assessment of State's available staff and financial resources).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**